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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 847.

WILBUR JACKSON, FRANK WILLIAMS AND FREEMAN HOLTON,

Petitioners,

VS.

PATRICK J. BRADY, WARDEN OF THE MARYLAND PENITENTIARY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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I.

OPINIONS OF THE COURT BELOW.

The opinion of the United States Circuit Court of Appeals for the Fourth Circuit was unanimous, is officially reported in 133 F. 2d 476 and is found on pp. 110-121, inclusive, of the Record. The opinion of the District Court of the United States for the District of Maryland is officially reported in 47 F. Supp. 362 and is found on pp. 9-21, inclusive, of the Record. The opinion of the Court of

Appeals of Maryland, which affirmed the convictions of the three petitioners, is officially reported under the name of *Jackson, et al. v. State of Maryland* in 180 Md. 658 (26 Atl. 2d 815). The Criminal Court of Baltimore City, in which the Petitioners were tried, delivered no opinion.

II.

JURISDICTION.

The brief of the Petitioners (p. 10) states that the petition for certiorari is filed under the authority of Sections 347 and 462 (c) of Title 28 of U. S. C. A. There is no Section 462(c) and if Section 463(c) was meant, it has no application to the case at bar. Section 347 only permits, does not grant a right to, review by certiorari. This Court will grant the review only where it finds in the Record special and important reasons therefor. Paragraph 5 of Rule 38 of the Court.

The Respondent contends that none of the reasons set forth in sub-paragraph (b) of paragraph 5 of the Rule is present, that there are no other valid reasons why the writ should issue and that the findings of fact and conclusions of law, made by the District Judge (R. 2-9) and affirmed by the Circuit Court of Appeals, are correct and should be confirmed by a denial of certiorari.

III.

QUESTIONS IN CONTROVERSY.

The Respondent does not agree with the Petitioners' statement of the questions in controversy.

The Petitioners have totally ignored a question which was brought to the attention of both the District Court and the Circuit Court of Appeals and fully argued before them. Neither court, however, decided the question for

the reason that each of them agreed with the Respondent that there was no discrimination against the Petitioners and that, in any event, the right to complain of discrimination had been waived. The question goes to the jurisdiction of the District Court to review the judgment of a State Court which admittedly had jurisdiction to try the traversers and, because of the decisions in *Wood v. Brush,* (140 U. S. 278) and *Andrews v. Swartz* (156 U. S. 272), should be brought to this Court's attention. The question assumes, only for argument, that there was discrimination, is of considerable importance to the administration of justice by the courts of the State of Maryland and may be stated as follows:

> Has a federal district court, under the facts in the case at bar, jurisdiction to release on habeas corpus negroes, convicted in a state court having jurisdiction of the offense and of the accused, solely on the ground that they were tried by a jury in the impanelling of which the jury officials of the State discriminated against their race?

In the second place, we disagree with the Petitioners' statement of the first question, because the three attorneys, appointed at the expense of the State to defend them at their trial in the Criminal Court of Baltimore City (R. 2, 111), made no mention of the grand jury at any time during that trial and made no objection, either by motion to quash or otherwise, to its composition or to the indictment which it returned. Both the District Court and the Circuit Court of Appeals found these to be the facts (R. 8, 9, 114, 116). For these reasons, the first question should be stated as follows:

> Was there, on the evidence in the Record, such intentional, arbitrary or systematic discrimination against negroes or exclusion of them from the petit jury panels in Baltimore City as would amount to a

denial to the Petitioners of the protection of the Fourteenth Amendment to the Constitution of the United States?

The Respondent concurs in the Petitioners' statement of the second question.

IV.

STATEMENT OF THE CASE.

The Respondent does not concede that the Petitioners' statement of facts is either complete or entirely accurate and, by way of supplement, calls the following facts to the Court's attention:

The trial judge appointed three able and experienced lawyers to defend the traversers at public expense (R. 2, 111). The trial began on October 23, 1941, and lasted six days. The judgments of conviction of murder were affirmed by the Court of Appeals of Maryland on June 17, 1942, and the second of October of that year was fixed as the date of execution. An application for a writ of habeas corpus was presented to a judge of the Supreme Bench of Baltimore City on October 1, 1942, and was denied the same day (R. 2). No review of that denial by a petition for certiorari from this Court was sought, though that remedy was open. *Betts v. Brady* (316 U. S. 455). Later on the same day a petition for the writ was filed with the District Court of the United States for the District of Maryland and that Court immediately ordered the writ to be issued, returnable on the sixth of that month (R. 3).

On the question of waiver, the Record shows as follows:

At the beginning of the trial in the Criminal Court 52 talesmen were sworn and examined on their voir dire and only 8 jurors were chosen from that number. Thereupon,

more talesmen were brought into the Court room to be similarly examined (R. 37-38). At that point one of the attorneys for the Petitioners for the first time objected to the fact that out of the 52 talesmen submitted only 2 had been negroes. The challenge was an oral one and was overruled without proffer of testimony or effort by any of the attorneys for the Petitioners to argue the same (R. 39).

On the question of discrimination, the Record shows as follows:

The percentage of colored jurors over the period from 1933 to 1941, both inclusive, has varied from 1 or 2 to 3 or 4 percent of the whole number of jurors (R. 6, 39). Of the persons in Baltimore who in 1940 were 25 years of age or more and had completed 7 or 8 years of grade school, 60% were male whites and 20% male negroes. Of those who had completed high school or some part thereof, the proportion of whites was about 22% and of the negroes about 8% of the total population (R. 6, 74-78).

The proportion of colored to white men, actually summoned for and rendering jury service, was determined by lot alone (R. 52, 88). The actual number of negroes who served in 1937 was almost a half again as many as those who served in 1933, while the number in 1941 was almost twice as many as that in 1933 (R. 6, 39). Of the 7 panels of 25 jurors each, who were drawn at the September term of Court 1941, at which the Petitioners were tried, there were 8 negroes out of a total of 175, or a percentage of 4.57 (R. 107-108).

The uncontradicted testimony was that the Jury Clerk and two Judges of the Supreme Bench made extensive and strenuous efforts to secure the names of qualified

negroes for the service file of prospective jurors, from which the actual talesmen were chosen at least three times a year (R. 7, 46, 80, 81, 97, 98, 114).

No evidence was produced to show the comparative number of white and colored persons selected by the Jury Clerk once or twice a year for examination as to their qualifications for jury service, although the questionnaires were delivered to the Jury Clerk after being marked by the Jury Judge and presumably were available to counsel for the Petitioners (R. 18, 49, 50, 92). There was no evidence introduced, and the charge was not made, that in making up the lists of persons to be examined or in passing upon their qualifications either the Jury Clerk or the Jury Judge excluded persons because they were negroes (R. 7, 9, 16, 17, 18, 19, 113).

Under the Maryland statutes only males over 24 and under 71 years of age, who are residents of Baltimore City (R. 22), are eligible and no distinction is drawn by the statutes between negroes and whites. All delegates, coronors, constables, schoolmasters, physicians, pharmacists, dentists, judges of the Orphans' Court, judges and clerks of elections, persons having pending litigation in Court, persons who have served as petit jurors within two years and certain members of the organized militia are exempt by Statute (R. 3, 4, 42-44, 86).

It has been the policy of the Supreme Bench to reject men convicted of any crime and the percentage of convictions for crime is higher among the negroes than among the whites (R. 8, 114). It has also been the policy of the Bench not to accept for the service file persons on relief and in the years immediately preceding the trial of the Petitioners a much larger percentage of negroes than of whites was on relief (R. 99, 114). It has been the practice of the

Bench to excuse from actual service on the jury panels office holders and employees of the City, State and Federal Governments upon their request (R. 48, 84, 86). The great majority of negroes most highly qualified for jury service fell into the exempted classes or asked to be excused, and the number of negroes in those classes constituted a small part of the total negro population (R. 80, 86, 87, 100). The remaining part of the negro population consisted largely of hourly laborers in large industrial plants and it was difficult to use these men on jury panels without actual compulsion (R. 21, 23, 100, 101). Unless it is necessary, the Bench does not require jury service of small business men or hourly laborers if such service would cause them financial sacrifice (R. 87, 103-104).

The District Court found as an ultimate fact from the evidence in the case that there had been no intentional and systematic exclusion of negroes from juries in Baltimore City and no discrimination against them in practice on account of their race or color in the selection of juries by the Supreme Bench of Baltimore City (R. 9, 114).

We believe that all the pertinent facts are found in the findings of fact made by the District Judge (R. 2-9) and that these findings are amply supported by substantial evidence.

V.

ARGUMENT.

A.

A FEDERAL DISTRICT COURT, UNDER THE FACTS IN THE CASE AT BAR, HAS NO JURISDICTION TO RELEASE ON HABEAS CORPUS NEGROES, CONVICTED IN A STATE COURT HAVING JURISDICTION OF THE OFFENSE AND OF THE ACCUSED, SOLELY ON THE GROUND THAT THEY WERE TRIED BY A JURY IN THE IMPANELLING OF WHICH THE JURY OFFICIALS OF THE STATE DISCRIMINATED AGAINST THEIR RACE.

This Court held in *Wood v. Brush* and *Andrews v. Swartz*, supra, that, even assuming that there was discrimination against negroes in the selection of jurors, that fact alone does not render a judgment of conviction void or authorize a Federal Court to review the same by writ of habeas corpus. The holding of those two cases has not, so far as we have been able to ascertain, been reversed by any subsequent decision either expressly or impliedly and the Circuit Courts of Appeal and District Courts still regard it as the law.

See:

Jugiro v. Brush (140 U. S. 291),
United States v. House (110 F. 2d 797; C. C. A. 9, 1940),
United States v. Hunt (117 F. 2d 30; C. C. A. 2, 1941),
Kelly v. Ragen (129 F. 2d 811; C. C. A. 7, 1942),
Moore v. King (130 F. 2d 857; C. C. A. 8, 1942),
Hawk v. Olson (130 F. 2d 910; C. C. A. 8, 1942),
Smith v. Olson (44 F. Supp. 456; D. Neb., 1942),
Elliott v. Commonwealth (45 F. Supp. 902; W. D. Ky., 1942),
Wheeler v. Kaiser (45 F. Supp. 937; W. D. Mo., 1942),
Coates v. Lawrence (46 F. Supp. 414; S. D. Ga., 1942).

See also:

52 A. L. R. 927.

The cases in which this Court has intervened because of racial discrimination in the selection of juries have involved reviews of the action of the highest State Courts in upholding convictions. *Pierre v. Louisiana* (306 U. S. 354), *Smith v. Texas* (311 U. S. 128), *Hill v. Texas* (316 U. S. 400) and the cases cited on page 16 of Petitioners' Brief. In no case has this Court reviewed such a question in a habeas corpus proceeding but on the contrary in *Wood v. Brush* and *Andrews v. Swartz*, supra, has held that the question cannot be reviewed in that manner.

As a means of insuring comity between the Courts of the Federal Government and those of the Governments of the several States, this Court said many years ago that it should be the policy of the Courts of each system to refrain from doing anything which would conflict with the exercise of their powers in the domain respectively set apart to each. See *Ex Parte Royall* (117 U. S. 241). A corollary of this principle is the rule that "The due and orderly administration of justice in a state court is not to be thus interfered with save in rare cases where exceptional circumstances of peculiar urgency are shown to exist." *United States v. Tyler* (269 U. S. 13). Unless the circumstances of the trial in the State Court are such as to "undermine and invalidate the judgment upon which the Petitioner's imprisonment rests", the Federal Court will not act. *Smith v. O'Grady* (312 U. S. 329).

The record in the case at bar does not disclose that "exceptional circumstances of peculiar urgency exists." The Petitioners do not complain that their trial was not fair and orderly in every respect except the selection of the jury. There was no howling mob outside the Court room door; there was no duplicity, pretense or sham practiced upon any of the prisoners by the attorneys for the State or by its officers; there was no denial of the right to have the

advice and protection of competent counsel; there was no refusal to make available to them any process which the State affords for the summoning of witnesses and otherwise making a defense; there was no unseemly haste in bringing the prisoners to trial or in the conduct thereof; and there was no charge of fraud of any kind. In the absence of any such circumstances, even though it were found that negroes had been excluded from the grand jury and the petit jury, it is clear that the Criminal Court of Baltimore City had jurisdiction during the entire trial. The convictions and commitments are, therefore, valid and the Federal Court should not release the Petitioners from the custody of the Respondent in this collateral proceeding.

B.

THE PETITIONERS WAIVED THEIR RIGHT TO COMPLAIN OF RACIAL DISCRIMINATION IN THE SELECTION OF THE GRAND JURY BY WHICH THEY WERE INDICTED AND IN THE IMPANELLING OF THE PETIT JURY WHICH TRIED THEM.

A prisoner in a state court may validly waive rights guaranteed to him by the Fourteenth Amendment and this is especially true when he is represented by competent counsel. This has been held with respect to the right to a twelve man jury, to the right to a jury selected without racial discrimination and to the right to be represented by counsel. See *Patton v. United States* (281 U. S. 276), *Johnson v. Zerbst* (304 U. S. 458), *Adams v. United States* (317 U. S. 269), *Cundiff v. Nicholson* (107 F. 2d 162; C. C. A. 4, 1939) and *Carruthers v. Reed* (102 F. 2d 933; *cert. den.* 307 U. S. 643, 1939).

Since 1869 it has been the law of Maryland that objection to the mode of selecting persons as grand jurors must be taken advantage of by the prisoner by a plea in abatement or motion to quash before pleading to the merits and that, if a plea of not guilty is filed, the objection is

waived. *Clare v. State* (30 Md. 164), *Cooper v. State* (64 Md. 40; 20 Atl. 986), *Hollars v. State* (125 Md. 367; 93 Atl. 970), *Whittemore v. State* (151 Md. 309; 134 Atl. 322). This has also been the law in the Federal Courts for many years. See *United States v. Gale* (109 U. S. 65), *Kaizo v. Henry* (211 U. S. 146), *Powers v. United States* (223 U. S. 303).

It is conceded by the attorneys for the Petitioners, one of whom was among the three lawyers who represented them in their criminal trial, that they filed no motion to quash the indictment and took no other step to question its validity, that they filed pleas of not guilty on behalf of their clients and that no question as to the composition of the grand jury or the indictment which it returned was raised at any time during the trial.

For these reasons it cannot be successfully maintained that the Petitioners can for the first time now complain of the manner in which the grand jury that indicted them was chosen.

With reference to the right to complain of the selection of the petit jury, it is the law of Maryland that a defect in the entire panel of jurors may be reached only by a challege to the array. It is also the law of this State that such a challenge must be made before a challenge to the polls. See *Lee v. Peter* (6 G. & J. 447), *Hamlin v. State* (67 Md. 333, 10 Atl. 214) and *Ralph H. Alexander, etc., v. R. D. Grier & Son, Inc.* (No. 40 of the January, 1943 Term, in The Daily Record of Baltimore City of Apr. 8, 1943).

The record at bar shows that after some 52 jurors had been examined on their voir dire and challenged for cause one of the attorneys for the traversers for the first time raised the question now sought to be retried in the Federal Courts. His oral challenge to the array was sup-

ported by no proffer of testimony and there was no effort, or even request, made by any of the three experienced attorneys to argue the point to the Court (R. 121). It does not appear that the trial judge denied to these attorneys any such right. No authority is cited by the Petitioners for their statement in their petition for certiorari and in their brief to the effect that it was incumbent upon the trial judge personally to make a record on this point. Their experienced counsel, foreseeing the possibility of an appeal, must have known that there was no such duty on the Court but that it rested upon them. There must have been some other reason for failing to incorporate in the record some evidence of the situation which they claimed to exist. That reason could not have been surprise because the jury list was a public record and had been open to inspection by them at any time after it was drawn prior to the beginning of the September Term of the Criminal Court in 1941 (R. 119). It does not appear that lack of funds could have been the reason because the same attorneys subsequently made a very full presentation of the relevant evidence befor the United States District Court. And as far as fear of racial prejudice was concerned, the record clearly shows that immediately prior to the making of the oral challenge to the array the trial judge had ordered the jurors, who had already been chosen and were sitting in the box, to be excluded from the Court room (R. 38-39). We make no comment on the attenuated argument that the three skilled attorneys were frightened out of making a record on the point by the manner of the trial judge. Finally, the Petitioners cite no authority for their contention that their challenge to the array could reach to the composition of the grand jury as well as to the panel of petit jurors.

For cases on the general question of waiver, we refer to *Matter of Spencer* (228 U. S. 652), *Carruthers v. Reed*,

supra, Morton v. Henderson (123 F. 2d 48; C. C. A. 5, 1941), and *Johnson v. Wilson* (45 F. Supp. 597, aff'd 131 F. 2d 1; C. C. A. 5, 1942).

We believe that the principle so strongly set forth in these decisions of the Federal Courts must be applied to the case at bar and that this Court should concur in the finding of the two lower Federal Courts that the Petitioners' right to complain of the grand jury and of the petit jury was competently and intelligently waived by the Petitioners' attorneys.

C.

THERE WAS NO INTENTIONAL, ARBITRARY OR SYSTEMATIC DISCRIMINATION AGAINST, OR EXCLUSION OF, NEGROES IN THE IMPANELLING OF PETIT JURIES IN BALTIMORE CITY.

The law to be applied to this point is not in dispute. This Court has held in *Pierre v. Louisiana, Smith v. Texas* and *Hill v. Texas,* supra, that when the evidence shows that there are a number of negroes qualified as jurors and that inordinately few members of the race have, over a substantial period, actually served as jurors, a prima facie case of discrimination is proved and, if not disproved by evidence showing that more of the race have not served because of lack of qualifications or because of some other equally valid reason, constitutes a denial of the equal protection of the laws. The statement of the principle, made in *Virginia v. Rives* (100 U. S. 313) and affirmed many times since, that the Fourteenth Amendment to the Constitution only requires that the States and their public officials refrain from exclusion, and does not command inclusion, of negroes still holds true.

The Petitioners contend that the statistics introduced into evidence, coupled with certain portions of the testimony of the Jury Clerk, established a prima facie case from

which discrimination might have been inferred and that the testimony of the two Judges of the Supreme Bench of Baltimore City did not overcome that inference. When the whole record is closely analyzed, however, we believe that it clearly and fairly shows that no such inference was warranted and that, even if warranted, it was conclusively overcome.

While the 1940 census figures show that 19.3% of the total population in Baltimore was comprised of negroes, it did not show how many of the negroes were residents of Baltimore, were between the ages of 25 and 70 years and met the other qualifications for jury service. There was no evidence at all to show the comparative number of white and colored persons summoned from time to time by the Jury Clerk for examination by the Jury Judge; and there was no evidence as to what percentage of those who were rejected by the Jury Judge were negroes. Indeed, there was no evidence of any kind, other than the statistics introduced by the Petitioners, to show the total number of persons in Baltimore qualified for jury service or what percentage of that total were colored people. The figures as to the comparative numbers of those who actually served on juries during the period between 1933 and 1941 proved nothing because the numbers were determined in each instance by lot and not by design (R. 39, 73-74). The same thing was true of the total number of men who were summoned by the sheriff's office for the petit jury panels in 1940 and 1941 (R. 54, 57, 58, 66, 70, 71, 73, 74, 103, 104). Of course, the total of those actually summoned did not actually serve on the jury panels at any time during that period (R. 39, 88, 89, 103, 104).

For these and other reasons appearing in the record (R. 74-78), we submit that no inference of discrimination can properly be drawn in this case.

Even if, however, a scintilla of discrimination could be induced by resolving every doubt in favor of the Petitioners, it would be wholly dispelled by the affirmative and uncontradicted testimony of the Jury Clerk and of the two Jury Judges. Without challenge, all three testified of the special efforts which they took to place the names of negroes in the service file (R. 7, 46, 80, 81, 97, 98, 114). The testimony of the two Jury Judges showed conclusively that the majority of negroes most qualified for jury service fell into the classes of persons exempted from service by statute or by rule of the Supreme Bench and that the number of negroes in those classes constituted a small part of the total negro population (R. 86, 87, 100). Their testimony also showed that the remaining part of the negro population consisted largely of negroes disqualified by criminal records or insufficient literacy or excused because of the nature of their occupations (R. 21, 23, 100, 101). Though, in effect, the Petitioners have charged these Judges with dereliction of duty, they produced no rebuttal to all this testimony and cross-examined only one of them. In view of the Petitioners' admission that at no time did the Clerk or the Judges act with any bias against the negro race, these facts must weigh heavily against them in arriving at a conclusion. The testimony of these men was clear, full and unequivocal and, as an analysis of the entire record will demonstrate, completely rebutted any inference that might have been drawn.

The Petitioners assert that the ratio of negroes to whites in the service file and on the juries has remained substantially constant for the period of the past 9 years and "the same in peace times as in war times." For the second assertion no foundation can be found in the record, and in view of the figures appearing on page 39 of the record and of the Jury Clerk's testimony pages 52, 54 and 55 it is not apparent how the first assertion can truthfully be

made. From the figures on page 39 it will be seen that the number of white jurors varied from as high as 2171 in 1935 to as low as 1543 in 1941, the year when the Petitioners were convicted. It also appears that the number of colored jurors serving varied from as few as 18 in 1933 to as many as 40 in 1938. It is also significant that the number of colored men serving in 1941 was almost twice as many as those serving in 1933. When the composition of the 7 panels of 25 jurors each, who were drawn and served during the September term of Court in 1941, is studied, it will be seen that there were 8 negroes out of a total of 175, or a percentage of 4.57% (R. 107, 108). We believe that this evidence, all introduced by the Petitioners themselves, refutes their assertions and answers their argument that the ratio of negroes to whites serving on juries and jury panels was invariable and systematic. There was no evidence whatever to support the assertion as to the service file.

The Petitioners argue that *Smith v. Texas* and *Hill v. Texas, supra,* control here. But those two decisions are distinguishable on their facts, first, because in neither case was the final selection of jurors for actual service made by lot and, second, because in both cases it was clearly shown that those charged with the duty of selecting the jurors had "consciously omitted to place the name of any negro on the jury list."

In addition, it is important to remember that in *Pierre v. Louisiana, supra,* and in the above two cases, this Court was reviewing records of convictions affirmed by the highest courts of the States of Louisiana and Texas. In the case now presented the Court is not asked to review directly the affirmance of the judgment of conviction by the Court of Appeals of Maryland. On the contrary, in a proceeding collateral to the criminal trial itself in the State's courts,

the Court is asked to exercise its discretion by reviewing the findings of fact and conclusions of law made by two Federal Courts upon which sat four Federal Judges. Generally speaking, concurrent findings by the lower federal courts on questions of fact will be accepted by this Court unless clear error is shown. As was said in *Delaney v. United States* (263 U. S. 586), "It would take something more than ingenious criticism to bring even into question that concurrence or to detract from its assuring strength,—something more than this record presents." That observation is, we believe, peculiarly pertinent here.

Finally, it cannot be said that the Court of Appeals of Maryland has been or is deaf to the command of the Fourteenth Amendment. Recognition of the constitutional principle of non-discrimination was given as early as 1885 in the case of *Cooper v. State*, supra. In 1932 the Court again recognized the principle when it reversed the conviction of a negro by the Circuit Court for Baltimore County where for 26 years no negro had served as juror. See *Lee v. State* (163 Md. 56; 161 Atl. 284). On a second appeal of that case to the highest Court of Maryland the conviction was affirmed on a record which showed that the names of 6 colored men qualified to sit as petit jurors appeared in a panel of 200. *Lee v. State* (164 Md. 550; 165 Atl. 614). An application for certiorari was subsequently denied by this Court (290 U. S. 639). In the first of these appeals Chief Judge Carroll Bond said that "no positive action at all is required as a performance of the duty imposed by the Constitution; it requires purely a negative, the abstaining from exclusion of negroes from the competition of qualifications for selection of jurors, and the chance of gaining places on panels." It is most significant, we think, that this is almost exactly the same language which was used by the Supreme Court of the United States in stating the constitutional principle ten years later in *Hill v. Texas*.

We urge the Court to conclude that the concurrent findings of the District Court and of the United States Circuit Court of Appeals on the question of discrimination vel non are amply supported by the evidence in the record and should not now be reviewed.

The Court is not asked by the Petitioners to decide any novel question of law but to review in a collateral proceeding a judgment of guilty that was entered after a fair and impartial trial and was affirmed by the Court of Appeals of Maryland. The burden rests upon the Petitioners to satisfy this Court that the findings of fact and conclusions of law, made by the District Court and affirmed by the Circuit Court of Appeals, were clearly erroneous. This they have failed to do. It is, therefore, respectfully submitted that this case is not a proper one for review by certiorari and that the petition for that writ should be denied.

Respectfully submitted,

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